

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE TENNESSEE

REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE: COMPLAINT OF XO TENNESSEE, INC.
AGAINST BELLSOUTH TELECOMMUNICATIONS,
INC.

DOCKET NO. 01-00868

COMPLAINT OF ACCESS INGEGRATED
NETWORKS, INC. AGAINST BELLSOUTH
TELECOMMUNICATIONS, INC.

Deposition of:

DON LIVINGSTON (By Phone)

Taken on behalf of ITC^DELTACOM

January 14, 2002

VOWELL & JENNINGS, INC.
Court Reporting Services
328 Washington Square Building
222 Second Avenue North
Nashville, Tennessee 37201
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APPEARANCES:

FOR ITC^DELTACOM:

HENRY WALKER
Attorney at Law
Nashville, Tennessee

and

NANETTE EDWARDS
Attorney at Law
Huntsville, Alabama

FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

PATRICK TURNER (BY PHONE)
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Atlanta, Georgia

FOR THE OFFICE OF THE STATE ATTORNEY GENERAL:

CHRIS ALLEN
Attorney at Law
Nashville, Tennessee

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I N D E X

WITNESS: DON LIVINGSTON

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1 The deposition of DON LIVINGSTON,
2 taken on behalf of ITC^DELTACOM, on the 14TH day
3 of January, 2002, in the offices of Boulton,
4 Cummings, Conners & Berry, Suite 1500, 414 Union
5 Street, Nashville, Tennessee, for all purposes
6 under the Tennessee Rules of Civil Procedure.

7 The formalities as to notice,
8 caption, certificate, et cetera, are waived. All
9 objections, except as to the form of the
10 questions, are reserved to the hearing.

11 It is agreed that James L. Vowell,
12 being a Notary Public and Court Reporter for the
13 State of Tennessee, may swear the witness, and
14 that the reading and signing of the completed
15 deposition by the witness are waived.

16

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18 * * *

19 DON LIVINGSTON
20 was called as a witness, and after having been
21 first duly sworn, testified follows:

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E X A M I N A T I O N

BY MR. WALKER:

Q. Mr. Livingston, I presume?

A. Yes. This is Mr. Livingston.

Q. I'm Henry Walker.

Describe who you work for and what your job description is.

A. I've changed assignments in the last several months; which role would you like me to describe?

Q. Start today and then go backward.

A. Okay. Right now I report in to Gail Godfrey who is vice president of Voice Products Portfolio, and my responsibilities are strategy and development for Voice Products across Small Business, Large Business, and Consumer.

Q. And how long have you held that job?

A. Since the middle of November so that would be a couple of months.

Q. Prior to that what was your job?

A. I was in Small Business Marketing which is an operating unit we have in BellSouth, and I reported to Mike Dickey; and my responsibilities included developing offers for retention, win-back, acquisition of customers, marketing

1 of communications to Small customer base.

2 Q. When you say that was within BellSouth,

3 that's BellSouth Telecommunications, Inc.?

4 A. The job where I was reporting to

5 Mr. Dickey?

6 Q. Yes.

7 A. Yes, that's correct.

8 Q. And what was Mr. Dickey's title?

9 A. Vice president of Small Business

10 Marketing.

11 Q. And to whom did he report?

12 A. Mike Dickey reported to David Scobey

13 who is president of Small Business Services.

14 Q. Do you know, how long has Mr. Scobey

15 been president of Small Business Services?

16 A. I don't know the exact date. Sometime

17 late June, early July.

18 Q. Of last year?

19 A. Of 2001, yes, sir.

20 Q. Mr. Livingston, did you -- were you

21 involved in the marketing of the BellSouth

22 Select program?

23 A. Yes, I'm involved with that. I had

24 someone in my group who has responsibility

25 within Small Business to market that program to

1 our customer base. There is also someone in
2 BellSouth Select Corporation that has a larger
3 set of responsibilities.

4 Q. Who would that be?

5 A. Rick Tice.

6 Q. He's the president of BellSouth Select?

7 A. I'm not sure of Rick's specific title,
8 but he was my main contact.

9 Q. So you both worked on the marketing of
10 BellSouth Select programs?

11 A. That's correct.

12 There are different responsibilities;
13 Rick's got one set, I've got another set. Mine
14 tends to be more specific to Small Business
15 customers.

16 Q. When did you first begin working with
17 BellSouth Select? Do you recall?

18 A. The BellSouth Select program has been
19 around for several years. I think when I came
20 into the position in the Small Business was
21 when I started working with BellSouth Select
22 group.

23 Q. When was that?

24 A. Let me think. Probably about June of
25 1999. So about two-plus years.

1 Q. So June of '99 or thereabouts the
2 BellSouth Select program was already in
3 operation?

4 A. Yes.

5 Q. Were you involved right from the get-go
6 in developing marketing programs for selling
7 BellSouth Select?

8 A. I'm not sure what you mean involved
9 from the beginning.

10 BellSouth Select was in place when I
11 came in to this assignment, and we used it to
12 fold it into customers, and when I got there it
13 had already been tested and it was in
14 development. So I'm not sure if I answered
15 your question.

16 Q. You did exactly, and I apologize, I'm
17 not very -- sometimes I'm not very precise
18 after about six cups of coffee.

19 When, to your knowledge, was BellSouth
20 Select first marketed in Tennessee?

21 A. I don't know specifically. I know
22 there was a trial early on -- I'm not sure
23 which set of geographies -- back in '99, and
24 then it expanded over that period of time, but
25 I'm not sure the specific dates.

1 Q. At the beginning of your involvement
2 with BellSouth Select, can you describe how the
3 program worked?

4 A. Can you be more specific on what, when
5 you say how it worked?

6 Q. Just give me a general description of
7 how the BellSouth Select program worked at the
8 time that you first began working with
9 BellSouth Select?

10 A. Select is a customer rewards program
11 that rewards BellSouth customers for their
12 spending with BellSouth Yellow Pages, BellSouth
13 local services, like I said, BST, BellSouth
14 Cingular, which is not --

15 Q. Could you spell Cingular?

16 A. I think it's C-I-N-G-U-L-A-R.

17 Q. Thank you. That was for the court
18 reporter's benefit.

19 A. Okay. It rewards customers for
20 spending for -- different companies with --
21 inside the BellSouth Corporation. And if a
22 customer chooses to enroll in this program they
23 get a statement and a newsletter, and they
24 get -- when I say rewards, they get points
25 based on their spending, and the customer can

1 choose to use those points for products and
2 services.

3 And our involvement was to make sure
4 the sales force understood the terms and
5 conditions of that program, and that they would
6 enroll customers into the program.

7 Q. Are you still involved with BellSouth
8 Select in your current job?

9 A. No, I am not.

10 Q. At the time you left your prior job in
11 November, approximately how many members did
12 BellSouth Select have regionwide?

13 A. About a hundred thousand.

14 Q. Do you have any idea how many of those
15 were in Tennessee?

16 A. I don't know the specific number, no.

17 Q. And those 100,000 would all be
18 classified as Small Business customers?

19 A. That's correct.

20 Q. Was BellSouth Select offered to
21 residential customers at any time?

22 A. There is -- the BellSouth Select name
23 is used for a consumer program, but the rewards
24 and benefits and the terms and conditions of
25 that program are very different to residential

1 customers.

2 Q. Please explain the difference.

3 A. I don't know all the specific
4 differences. I do know that there are no
5 points given to residential customers based on
6 their spending.

7 Q. How do I earn points? Is it a dollar
8 per point?

9 MR. TURNER: Henry, if you could,
10 just specify whether you're talking about on
11 the business side or the consumer side.

12 BY MR. WALKER:

13 Q. I'm going back to the business side.

14 It's my understanding, Mr. Livingston,
15 that on the residential side you don't get
16 points. Is that correct?

17 A. That's my understanding.

18 Q. So let's go to the business side: How
19 do I get points?

20 A. If you have a dollar -- if you have a
21 dollar for each -- you get a point for each
22 dollar you spend on your monthly bill.

23 Q. And are there other ways to get points?

24 A. From time to time there are bonus
25 points.

1 Q. For what are bonus points awarded?

2 A. If you purchase additional product, if
3 there is a promotion that was being run you
4 might get 50 additional bonus points. It
5 really depends on the promotion that's being
6 run.

7 Q. You would sometimes get promotion
8 points just for filling out a questionnaire?

9 A. I believe there were some bonus points
10 for a customer satisfaction survey early on,
11 but I don't know any specifics.

12 Q. Was the BellSouth Select program
13 tariffed in any BellSouth state to your
14 knowledge?

15 A. I'm not aware of that.

16 Q. Was it tariffed at the FCC?

17 A. I don't know. That's not my specific
18 level of responsibility.

19 Q. Thank you.

20 A. Perhaps Mr. Tice would know.

21 Q. If you had a question about whether or
22 not the marketing of BellSouth Select was
23 consistent with legal and regulatory
24 requirements, to whom would you go?

25 A. My typical day-to-day contact would be

1 Mr. Tice, and then he would review it with his
2 legal counsel as appropriate.

3 Q. So if there were a question about the
4 legality of a particular BellSouth Select
5 program, it would be Mr. Tice' responsibility
6 to get the answer to that?

7 A. That's correct.

8 Q. When you first became acquainted with
9 the BellSouth Select program, what could a
10 member redeem points for?

11 A. I'm sorry, you were breaking up when
12 you asked that last question.

13 Q. For what could a member redeem points?

14 A. There are a variety, and it's changed
15 over time; I can't remember. Early on, there
16 were some products and services.

17 I can tell you over the last six months
18 there have been business-oriented products that
19 you could redeem for a subscription of Wall
20 Street Journal, a fax machine, telephone
21 equipment, voice equipment, and then there are
22 credits on your bill as well.

23 Q. Now, when you say credits on the bill,
24 do you mean credits on the entire bill or just
25 a portion of the bill?

1 A. I'm not sure from a legal or
2 regulatory, when you say credits on the bill.
3 Q. If I'm a customer and I called you up
4 and I said, My total bill this month is a
5 hundred dollars and I have enough credits
6 through the BellSouth Select points to get \$100
7 credit on my bill, does that -- would that mean
8 that my entire bill would be -- for that month,
9 I would get a credit and I wouldn't owe
10 anything?
11 A. I'm not sure.
12 I think the way the mechanics would
13 work, I think you would have to ask Rick
14 between -- how it was recorded between the
15 scenario you just asked about.
16 Q. When you were marketing it to customers
17 did you tell the customer it would be a credit
18 off his BellSouth bill?
19 A. When we marketed we did say you earn
20 points and you can redeem those points for
21 products and services or a credit off your
22 bill.
23 Q. Now, I've reviewed all the marketing
24 materials over the last three years and it
25 looks to me, Mr. Livingston, that early on

1 there was a restriction which said you could
2 only get a credit off the nonregulated portion
3 of your bill. And then later on I did not see
4 any reference to that restriction. Was there a
5 point in time where that change?

6 A. I don't believe it's changed, I thought
7 that's always been the restriction.

8 Q. That you could only get a credit on the
9 nonregulated total portion of your bill?

10 A. That's what I believe.

11 Again, that's what I rely on Mr. Tice
12 for -- as he constructs the program for, to
13 make sure that all those terms and conditions
14 are followed and clear.

15 Q. So in other words, if I had a hundred-
16 dollar bill, and \$80 of it was for regulated
17 services and \$20 was for unregulated services,
18 are you saying that I could only get a credit
19 for the \$20 off even if I was entitled to a
20 hundred-dollar credit?

21 MR. TURNER: Henry --

22 MR. WALKER: Am I being too
23 confusing?

24 MR. TURNER: Well, I don't want to
25 be accused of coaching the witness, but I do

1 have a problem with that question.

2 MR. WALKER: I may not have
3 phrased it very well, Patrick, but I think you
4 see where I'm going to. I'm just trying to
5 figure out how the program worked.

6 MR. TURNER: I do, Henry. I'll
7 just tell you -- are you talking about a
8 snapshot in time or over time?

9 MR. WALKER: I'm talking about
10 both. I want to know if it changed.

11 It's my understanding that at one
12 point you could get a credit only against the
13 nonreg portion of your bill, and at some point
14 that changed. And I guess I'm trying to find
15 out what the witness can tell me about when
16 that change occurred.

17 THE WITNESS: We didn't make any
18 conscious decision to make any change. To my
19 understanding -- again, that's why I'm
20 suggesting talk to Mr. Tice -- that it's always
21 been if you redeemed those points that you
22 earned for credit it was applied to the nonreg
23 portion of the bill.

24 BY MR. WALKER:

25 Q. Mr. Livingston, were you involved in

1 the offer allowing customers to get three-
2 months free service if they signed up for the
3 Key Customer discount program for a term of 36
4 months?

5 A. I was involved with that. I wouldn't
6 characterize the offer exactly the way you
7 described it.

8 Q. I understand.

9 Who came up with that idea?

10 A. I was one of the folks that came up
11 with the idea. There were a couple of us
12 brainstorming, and so I was there at the
13 initial creation of it.

14 Q. Who were the others?

15 A. The other gentlemen were folks that
16 were in my group that were in my reporting
17 responsibility, one gentleman is Brent Mlott
18 who reports directly to me, and then one of his
19 managers, Scott Johnson.

20 Q. And how do you spell Brent's last name?

21 A. M-L-O-T-T.

22 Q. Thank you.

23 When did you come up with that idea?

24 When did that conversation occur?

25 A. Sometime early in 2000, I think March

1 time frame.

2 Q. Now, listen to me carefully and I'm
3 going to try to make myself clear.

4 You testified about five minutes ago
5 that it was your understanding that a customer
6 could not redeem points against the regulated
7 portion of his bill. Given that understanding,
8 how could you believe that three months free
9 service would be consistent with that
10 understanding?

11 A. I think there were -- the way that --
12 the way the offer came about and the way the
13 training was done, there were some inaccuracy.
14 Let me see if I can explain.

15 In March, when we came up with the
16 offer, at the time I thought combining two
17 previously approved programs, specifically the
18 Select program and the Key Customer program --
19 at the time I thought it was a minor change so
20 I didn't really take it to our legal or
21 regulatory folks for approval.

22 And in retrospect, I can now see how
23 combining two of those programs together can
24 create issues, and I will never do that again.
25 I will always, no matter whether it's a small

1 variation in my mind or any other kind, take it
2 to our legal regulatory staff. So I made a
3 mistake in judgment.

4 MR. WALKER: Patrick, you can let
5 go of his arm now.

6 MR. TURNER: I'm not touching him.

7 BY MR. WALKER:

8 Q. I'm sorry to interrupt, Mr. Livingston.
9 Go ahead.

10 A. So the two previously approved programs
11 were one of the inaccuracies of the program.

12 Q. I appreciate that answer, but you
13 didn't really directly answer my question.

14 A. I'm sorry.

15 Q. My question was, you said you
16 understood that Select points could not be used
17 as a credit against regulated services.

18 Given that understanding, isn't that
19 inconsistent with allowing a customer to use
20 Select point as a discount off of the tariffed
21 charge for Key Customer discount programs?

22 A. The way -- when I said that we
23 dissolved this idea, the way we conceived of it
24 was hey, here is some bonus points that a
25 customer can get and they have their choice to

1 redeem those points for whatever they would
2 like. And again, I thought that the redemption
3 of those points would be against the nonregu-
4 lated service so I didn't think it even
5 applied to regulated service.

6 Q. Did there come a point in time,
7 Mr. Livingston, where a customer was allowed to
8 redeem points in exchange for a check from
9 BellSouth Select?

10 A. Shortly after, in the fall sometime of
11 2001, there were some changes made in the
12 BellSouth Select program, and I believe one of
13 those changes was that the customer would now
14 receive a check from BellSouth Select.

15 Q. Is that program still in effect today?

16 A. BellSouth Select program?

17 Q. Yes, and the option of redeeming the
18 points for cash.

19 A. I'm not sure. You'll have to ask Mr.
20 Tice. Again, I think we made a change. I'm
21 not sure of the specifics.

22 Q. And you're saying that change was made
23 sometime in the fall?

24 A. Yes.

25 Q. Was that the first time that customers

1 were allowed the option of redeeming points for
2 cash?

3 A. I'm not sure. Again, it's been over
4 two and a half years, there has been several
5 options new to the program that they could
6 redeem for things, products and services and
7 credits on your bill and cash or check. I'm
8 not sure of that.

9 Q. Whose idea was it to allow customers to
10 redeem points for cash?

11 A. I don't know. I wasn't involved at
12 that point in the program.

13 Q. You had left the program by then?

14 A. I was starting a transition to my new
15 assignment about that time.

16 Q. What service benefits does a BellSouth
17 Select member have that are not available to
18 BellSouth customers who are not members of
19 BellSouth Select? And by "service" I'm
20 referring to service problems and repairs.

21 A. There are no differences.

22 Q. Are you sure about that?

23 A. In the BellSouth Select program
24 customers can redeem for points, and those are
25 available. Is there another one that you have

1 a question about?

2 Q. Yes, I'm talking about repair
3 escalation.

4 A. You're referring to the BellSouth
5 Select service managers?

6 Q. Yes, I am.

7 A. All customers have access to service
8 managers.

9 Q. That's not my question. My question
10 is, how does a BellSouth Select member get
11 repair service that's different than the repair
12 service offered to nonmembers?

13 MR. TURNER: Asked and answered.

14 MR. WALKER: Well, then I would
15 ask that he answer it again.

16 THE WITNESS: Okay. Let me make
17 sure I rephrase your question so I'm answering
18 your question.

19 Is there anything different
20 between what BellSouth Select customers get in
21 terms of service escalation and non-Select
22 customers?

23 BY MR. WALKER:

24 Q. Let's start back here at the beginning.
25 In the marketing materials that you use

1 or you develop to market BellSouth Select, do
2 they mention services escalation as a reason
3 for persuading people to sign up for BellSouth
4 Select?

5 A. They mention that customers get a
6 BellSouth service -- Select service manager.

7 Q. And do they mention that that is an
8 advantage in getting rapid escalation?

9 MR. TURNER: I'm going to object
10 to the characterization.

11 Can you read to him what they say.

12 MR. WALKER: No. He developed the
13 training programs. I guess I'm asking him --

14 BY MR. WALKER:

15 Q. Do the training programs that you
16 developed talk about the advantages in getting
17 better repair services through the BellSouth
18 Select program?

19 A. I would characterize -- I'm not looking
20 at the materials you're looking at. I would
21 characterize it as here is a benefit for the
22 customers, and we don't really say it's an
23 advantage more than the other. We try to say
24 what the benefit is to the customer.

25 Q. What is the benefit to the customer?

1 A. The benefit to the customer is that
2 there is an individual, or a Select service
3 manager that will be responsible for a repair
4 situation a customer is in, and will keep the
5 customer statused about putting that -- when
6 the repair person, the technician will arrive
7 and whether the trouble has been cleared.
8 That's the benefit that they get, greater
9 frequency of communication after there is an
10 escalation.

11 Q. Thank you.

12 Mr. Livingston, have you received any
13 discipline within BellSouth for having
14 implemented these training materials that you
15 said were in error?

16 A. You asked -- let me clarify. Yes, I
17 have received disciplinary action related to
18 this offer. Someone in my organization who was
19 responsible for training, I didn't specifically
20 develop that training, but I am responsible for
21 those individuals.

22 Q. Who was it who developed the actual
23 training?

24 A. Scott Johnson, who reports to
25 Mr. Mlott.

1 Q. What about Sara Ducharm, did she have
2 anything to do with the development of it?

3 A. No, that was Scott that was responsible
4 for that.

5 Q. Give me Scott's last name again.

6 A. Johnson.

7 Q. What was the form of the discipline
8 that you received?

9 A. I received several forms of discipline.
10 There is a letter in my file. Part of the
11 reason I'm in this new assignment, I moved over
12 to another position, and then also there has
13 been several monetary impacts to me as well.

14 Q. I don't mean to embarrass you, but what
15 monetary impacts?

16 A. At my level I receive stock option
17 bonuses for performance in the past year and I
18 will not be receiving any of those; and
19 secondly, I will not be receiving any kind of
20 raise to my current salary.

21 Q. Now, I'm confused about something. You
22 said earlier, Mr. Livingston, that it was Mr.
23 Tice' responsibility, not yours, to get
24 regulatory and legal advice concerning these
25 marketing programs.

1 Do you know whether or not he sought
2 legal or regulatory advice concerning this
3 particular program?

4 A. I can't say whether he did or didn't.

5 As I had stated before, when myself and
6 Mr. Mlott and Mr. Johnson were together,
7 brainstorming, at the time I thought that
8 taking a previously approved program, Select
9 and Key, and putting them together was, I
10 thought, at the time a minor change, so I
11 didn't make Mr. Tice aware of this, again, what
12 I thought was a small variation at the time and
13 allow it to go through the normal approval
14 processes, which was one of the reasons I was
15 disciplined.

16 Q. In other words, when did Mr. -- you
17 never discussed this new marketing program with
18 Mr. Tice; is that what you're saying?

19 A. We developed training and we rolled it
20 out. Certainly we made him aware that we were
21 executing the program, but it wasn't until we
22 were right in the middle of launching it.

23 Q. That -- I'm sorry. When did you launch
24 it?

25 A. We filed it earlier in 2001 and then we

1 launched it in the middle of the summer of
2 2001.

3 Q. There was some testimony earlier that,
4 in fact, this program was, in fact, launched in
5 Memphis either in April or May. Was that
6 consistent with your memory?

7 A. Yes, when I say we trialed it, we
8 trialed it in the city of Memphis.

9 Q. After the trial and you began offering
10 it, did you offer it regionwide?

11 A. Yes, we did.

12 Q. And that would have been beginning in
13 July?

14 A. I don't remember the specific date.
15 Late July, early August.

16 MR. WALKER: Patrick, one second,
17 please.

18 MR. TURNER: Okay:

19 (Brief respite.)

20 BY MR. WALKER:

21 Q. A couple more questions.

22 If a customer signs up for the Key
23 Customer discount program and then decides to
24 terminate that program, is he required to
25 reimburse BellSouth for the discounts that he

1 has received under the Key Customer discount
2 program?

3 MR. TURNER: Henry, at this time,
4 given the rules that are in effect in
5 Tennessee, I need you to specify whether you're
6 talking about Tennessee or other states.

7 BY MR. WALKER:

8 Q. In Tennessee.

9 A. In Tennessee there is a particular
10 stipulation. A Key Customer, that if the
11 customer discounts the -- what they have to pay
12 back can be no more than 12 months of benefits
13 they have had, where let's say there was -- a
14 customer signed a three-year agreement and they
15 disconnected in Month 16 that they would be
16 responsible for only 12 months of repaying the
17 discount that they received.

18 Q. Now, is he also required to pay back
19 any free months of service that he has received
20 under the BellSouth Select program?

21 A. Let me think.

22 On BellSouth Select, customers receive
23 points and they can redeem those points, and if
24 they leave the program, they forfeit the use of
25 those points.

1 Q. But suppose they have already redeemed
2 the points, say, for a discount on the bill or
3 for cash, are they required to reimburse
4 BellSouth for that benefit?

5 A. I'm not sure. That would be a question
6 for Mr. Tice on how those terms and conditions
7 worked.

8 Q. Were you responsible for developing the
9 different levels of the BellSouth Select
10 Program such as Platinum, Silver, and Gold?

11 A. Yes, I was involved during that period
12 of time.

13 Q. Just explain to me, generally speaking,
14 the differences between those levels of
15 participation.

16 A. Platinum is the existing program that
17 we have for customers. And you are, again, as
18 I mentioned, rewarded on spending for BellSouth
19 Yellow Pages, BellSouth Mobility or Cingular
20 and BST. And then the BellSouth Silver
21 program, you did not get points monthly, you
22 got a set of points if you bought certain
23 products and services, and there was an
24 eligibility requirement. Silver tended to be
25 small-sized customers and Platinum tended to be

1 larger size customers.

2 Q. Is the Silver program still in
3 existence?

4 A. No. We phased that program out.

5 Q. Why is that?

6 A. There was a significant amount of
7 competition in the nine state region and
8 competitors have started taking significant
9 market share of smaller size customers so the
10 BellSouth Platinum program eligibility was
11 expanded to be the same as BellSouth Silver
12 program. So there was no need to have two
13 distinct programs. We were responding to what
14 was happening in the marketplace.

15 Q. About when did that change occur?

16 A. Middle of 2001.

17 Q. Okay. So the Platinum program is the
18 program that's in effect or was in effect when
19 you left your job in November?

20 A. That's correct.

21 Q. On what basis were bonus points
22 awarded?

23 MR. TURNER: Same objection as
24 always, Henry. I would prefer that you specify
25 a particular program, but it's your question.

1 BY MR. WALKER:

2 Q. Mr. Livingston just educate me a little
3 bit. I read a lot in here in training
4 materials about bonus points.

5 Tell me what bonus points are, first,
6 and then I want to know what basis they would
7 be awarded and how that might have changed over
8 time.

9 A. The bonus points were, again, to reward
10 customers for specific actions they take. I
11 think there is an example in there. If you
12 fill out a customer survey you'll get some
13 small amount of bonus points as a thank you for
14 your time.

15 There would have been bonus points --
16 if you will buy certain products and services,
17 that you'll get bonus points.

18 So depending on what the business
19 situation is, you will develop or we'll come up
20 with some ideas, we'll talk with Rick, we'll
21 talk with Legal and Regulatory and make sure
22 that's okay, and then we'll launch bonus
23 points.

24 Q. Does BellSouth have discretion in the
25 way bonus points are awarded?

1 A. I'm not sure. When you say
2 "discretion," BellSouth?

3 Q. BellSouth Select, excuse me.

4 A. Rick and his team are responsible for
5 setting up terms and conditions for bonus
6 points. And so we work with those guys to stay
7 within those guidelines, again except for this
8 particular situation where I combined the two
9 programs together without going through the
10 correct approval process.

11 Q. Robin Porter said that sometimes the
12 amount of bonus points that she could award had
13 to do with how many were left in the budget.

14 Does that mean that she's budgeted a
15 certain amount of bonus points to award?
16 Explain how the size of the budget could affect
17 the awards of bonus points.

18 A. Rick's got one set of responsibilities
19 for Select and we've got another one, and so
20 that he can manage his budget, he would allow
21 us authorization to spend a certain number of
22 bonus points based on some criteria, and if
23 there were several other bonuses awarded and we
24 were running close to the preallocated budget,
25 then we would not have enough to make offers to

1 customers.

2 Q. I see.

3 Would a customer returning from a
4 Select be eligible for more bonus points than
5 someone who is an existing BellSouth customer
6 signing up for the BellSouth Select program?

7 A. Are you talking about one specific
8 offer or are you talking about in general?

9 Q. In general.

10 A. We develop offers that are available to
11 all customers, but we will target certain
12 offers to form our BellSouth customers just
13 like we'll target certain offers to existing
14 customers.

15 But if an existing customer found out
16 about an offer that we were trying to target to
17 former customers, they would be eligible for
18 those.

19 Q. So in other words, you might not have
20 marketed the program to existing customers but
21 if they found out about it and asked for it
22 they could get it, too?

23 A. That's correct.

24 Q. Was the Win-Back Trial that involved
25 the three months free receivables, was that

1 targeted to a specific group of customers?

2 MR. TURNER: Henry, when you say
3 "trial" are you talking about the April time
4 frame in Memphis?

5 MR. WALKER: Yes.

6 MR. TURNER: Okay, thank you.

7 THE WITNESS: It's available to
8 all customers, but we were targeting former
9 BellSouth customers.

10 BY MR. WALKER:

11 Q. I'm sorry. Say that again.

12 A. It was available to all customers, but
13 we were targeting former BellSouth customers.

14 Q. Did you develop or did your department
15 develop the list of former BellSouth customers
16 who were targeted?

17 A. There is a group inside of BellSouth,
18 Small Business Marketing, that has
19 responsibility for that, but it's not in my
20 direct responsibility. But yes, they develop
21 that list.

22 Q. Do you know how they develop that list?

23 A. The way the list is developed, we have
24 a snapshot of our existing customers and then
25 we take a snapshot at the next month, and those

1 that are missing we assume have left to
2 competition.

3 Q. Okay.

4 A. And that list, from my understanding,
5 has been approved by our legal group as far as
6 acceptable source of information.

7 Q. Did you develop training materials or
8 were training materials developed under your
9 supervision that within the training materials
10 were specifically targeting former BellSouth
11 customers?

12 A. You mean related to this offer or in
13 general --

14 Q. Related to this offer. Let me remember
15 rephrase that. I'm not being very clear.

16 Did you write marketing scripts or did
17 someone in your shop write marketing scripts
18 that were tailored to win back former BellSouth
19 customers in connection with this particular
20 offer?

21 A. No, we did not write scripts. My group
22 is responsible for writing training about the
23 offer, but not responsible for writing specific
24 scripts. I don't normally review that training
25 material, but folks in my group do develop the

1 training material.

2 Q. Who writes the scripts?

3 MR. TURNER: Henry, I need you to
4 tell him which group you're talking about.

5 BY MR. WALKER:

6 Q. The scripts that relate to this
7 particular Win-Back program.

8 MR. TURNER: The three months free
9 service program?

10 MR. WALKER: Right.

11 THE WITNESS: Sometimes scripts
12 are developed, sometimes they're not. If --
13 again, the way we would -- the marketing
14 organization, my organization would develop the
15 ultimate training to explain how it should
16 work, and the sales force may or may not
17 develop scripts, depending on the preference of
18 the sales force. They may have experienced
19 people that can read the training and put
20 things into their own words and conversations
21 with customers, and sometimes they follow
22 scripts.

23 BY MR. WALKER:

24 Q. I guess my question is, do you know who
25 wrote the scripts that were used to market this

1 particular two and three free months service
2 program in Tennessee?

3 A. No, I don't know.

4 Q. Okay.

5 MR. WALKER: I'm going to turn it
6 over to Nanette.

7 **E X A M I N A T I O N**

8 BY MS. EDWARDS:

9 Q. Good afternoon. Can you hear me
10 clearly?

11 A. Yes, I can.

12 Q. Mr. Livingston, my name is Nanette
13 Edwards, and I'm here on behalf of ITC[^]
14 DeltaCom.

15 My question is on this, to the extent
16 that you know regarding this BellSouth Select
17 program, and I just mean generically across the
18 various periods of time that you have been
19 involved or worked with it, how does a
20 BellSouth customer -- and I'm assuming this is
21 BellSouth Business customer, how do they get
22 invited to join the program?

23 A. There is a variety of ways customers
24 can be put into the program. BellSouth Yellow
25 Pages organization, their sales force can

1 invite a customer to enroll, BellSouth Select
2 can send out a direct mail piece to customers
3 and invite them to enroll at BellSouth, or BST
4 part of BellSouth, their sales force can invite
5 a customer to enroll.

6 Q. I guess my question is would it be fair
7 to say this was all done through direct sales
8 channels?

9 A. There is a variety of channels. We
10 have had some customers enroll via, again,
11 direct mail or website or through the direct
12 sales force as well.

13 Q. So I have direct mail, website or
14 direct sales force?

15 A. Correct.

16 Q. What distinguishes someone who gets
17 invited versus someone who doesn't get invited?

18 A. I'm not sure what you mean.

19 Q. Well, I guess my question is, how did
20 you decide who to invite and who not to invite?

21 A. The Yellow Pages organization makes
22 their determination of who they want to invite,
23 Small Business decides who they want to invite
24 based on who is a more valuable customer.

25 Q. And when you say "more valuable

1 customer," can you give me some parameters
2 around --

3 A. We use a revenue threshold to decide to
4 invite or enroll customers.

5 Q. And what is that revenue threshold?

6 A. It's changed over time. It was \$250 a
7 month and now it's \$100 a month. And they also
8 have to have a nonregulated service which is
9 part of the enrollment criteria.

10 So there is a local service spend that
11 we would use and then make sure that we have a
12 nonregulated service.

13 Q. So if I understood you correctly, there
14 is a revenue threshold, but there is another
15 qualification: You have to have a nonregulated
16 service; is that correct?

17 A. That's correct.

18 Q. Let me ask you this question. Let's
19 just say I only bought a nonregulated service,
20 let's say I only buy BellSouth Internet service
21 or BellSouth Yellow Pages. Can I still be a
22 member and can I still get points?

23 A. Absolutely.

24 Like I said, BellSouth Yellow Pages
25 organization decides what set of their

1 customers that they'd like to enroll.

2 Q. Now, if I understood the material
3 correctly, though, and this has, again,
4 probably changed over time, but if I did just
5 buy the Yellow Pages, I have to spend \$3 to get
6 a point; is that correct?

7 A. Yes. The way you earn points with
8 BellSouth Yellow Pages is different.

9 Q. So for BellSouth Telecommunications,
10 Inc., which is, i.e., the Small Business
11 Division, what they did is they went through
12 their current list of customers and said, Okay,
13 does this guy have a certain revenue threshold
14 and would he potentially -- he or she
15 potentially qualify for the BellSouth Select,
16 and then you would send out a direct mailer; is
17 that correct?

18 A. That's correct.

19 Q. Mr. Livingston, going back to the
20 qualifications that you have to meet to become
21 a member of the revenue threshold, and in the
22 nonregulated service that you have to subscribe
23 to, can you explain to me in your -- to your
24 own understanding why there is that requirement
25 that you have to purchase a nonregulated

1 service?

2 A. In working with Mr. Tice, there is,
3 again, some terms and conditions set forth by
4 BellSouth Select Corporation, and that's one of
5 them.

6 Q. Do you know why that's one of their
7 terms and conditions?

8 A. I think you would have to ask Rick
9 to....

10 Q. Explain it?

11 A. Yeah.

12 Q. Okay. Mr. Livingston, have you ever
13 heard the term specialist?

14 A. Yes.

15 Q. What does that term mean to you in the
16 context of these programs that we have been
17 talking about?

18 A. We use the word "specialist" in a lot
19 of different ways. We have communications
20 specialists; that is one sales title. We use
21 the specialist to describe the outbound
22 telesales position. So I'm not sure which one
23 of those words references what you're asking
24 about.

25 Q. And of course you're on the telephone

1 so I can't point you to a specific document.

2 Earlier I had asked a series of
3 questions of, I believe it was Mr. Sisk,
4 Mr. Michael Sisk, and he, in the document --
5 like, one document, Exhibit 1, was a BellSouth
6 Select Training Guide and Exhibit 2 was, like,
7 an e-mail, and it just referenced with regard
8 to the BellSouth Select bonus point -- you
9 know, not bonus point, excuse me, just the
10 BellSouth Select program, not necessarily bonus
11 points, but just BellSouth Select program, that
12 if you had questions you could go to your
13 specialist.

14 Do you know what it means by the term
15 "specialist" in that type of context?

16 A. No.

17 Again, we've got a couple of different
18 ways -- we have direct sales force, and our
19 inbound sales force are called communications
20 specialists, and our outbound telesales folks
21 can be called account specialists, so it could
22 refer to either one of those two sales titles.

23 Q. Have you ever spoken to a Mr. Scott
24 Davis?

25 A. Yes, I know Scott and I've talked to

1 him a variety of times.

2 Q. So would Mr. Davis, if he had had a
3 question about like, for example, this program
4 that we were talking about with the two and
5 three months that was, you know, combining the
6 Key Customer and the BellSouth Select program,
7 if he had had a question about it, would he
8 have called you?

9 A. He probably would have called Scott
10 Johnson who was in my organization.

11 Q. If he had had any questions and needed
12 clarification; is that correct?

13 A. That's correct.

14 Q. And Mr. Scott Davis' title is an
15 acronym, C-A-M, I believe it stands for
16 competitive -- well, do you know what his title
17 stands for, C-A-M?

18 A. Competitive assessment manager.

19 Q. Okay. And would Mr. Davis be
20 considered a specialist of some type?

21 A. His title is competitive assessment
22 manager, he's got a variety of responsibili-
23 ties, he's supposed to monitor what's happening
24 with competitors, customers so that's his
25 responsibilities.

1 Q. Have you ever heard the term win-back
2 specialist?

3 A. No, I haven't.

4 Q. Going back to the points -- and I think
5 this was touched on a little earlier -- there
6 are instances, depending upon what program or
7 promotion is being run, where a customer who is
8 a member of the Select program can qualify for
9 bonus points. Is that correct?

10 A. I think I said that customers can get
11 bonus points for a variety of actions that they
12 take.

13 Q. Would, say, signing up for the Full
14 Circle promotion be -- could they select to get
15 bonus points?

16 A. I can't remember if that was an option
17 or not. It may have been. We have a lot of
18 offers and variations that we've trialed over
19 the last year. Some have been successful and
20 some have not.

21 Q. Would you say that overall having the
22 Select BellSouth Select program has been
23 successful for BellSouth?

24 A. Customers certainly are enjoying the
25 BellSouth Select program, the original one, the

1 BellSouth Partner program.

2 Q. And when you say "enjoy," has it been
3 successful for BellSouth?

4 A. Yes, customers are continuing to enroll
5 in the program and we see great testimonials
6 from customers that they appreciate being
7 recognized by BellSouth and the Yellow Pages
8 organization.

9 MS. EDWARDS: I think that's all I
10 have. Thank you.

11 **E X A M I N A T I O N**

12 BY MR. ALLEN:

13 Q. Mr. Livingston, this is Chris Allen of
14 the Tennessee Attorney General's Office. How
15 are you doing?

16 A. I'm doing good.

17 Q. Good. We're just about through. I
18 just had one question for you in response to
19 earlier questions.

20 In response to the questions how to
21 decide who to invite to the Select program you
22 mentioned a revenue threshold and the fact that
23 the potential or prospective member of Selected
24 to subscribe to a nonregulated service.

25 Sir, is it true that if a customer

1 meets the revenue threshold and subscribes to a
2 nonregulated service, are they automatically
3 invited to join BellSouth Select?

4 A. When you say "automatically invited,"
5 do you mean that they're automatically enrolled
6 or do they get a direct mail piece?

7 Q. Direct mail piece.

8 A. Yes, we will look in our database and
9 see which customers are eligible for the
10 program, and then we will try to invite them to
11 the program, could be a direct mail piece or
12 the sales force could mention it to the
13 customer.

14 Q. So if I understand you correctly, sir,
15 there is no requirement that in order to be
16 eligible to join the BellSouth Select, that
17 they have to -- that the customer has to reside
18 in a hot wire center?

19 A. No, the BellSouth Select program is
20 available to all customers statewide in
21 Tennessee, and that is meant to be a retention
22 and rewards program to that customer for doing
23 business with BellSouth in total, meaning BST
24 as well as BellSouth Yellow Pages.

25 Q. One last question, Mr. Livingston.

1 When you said you looked to see -- to
2 determine when a customer becomes eligible for
3 the Select program, how often do you look?

4 A. It's changed over the two and a half
5 years. Anywhere from monthly to quarterly.

6 MR. ALLEN: Thank you, that's it.

7 MR. TURNER: Henry, anybody else
8 there got any?

9 MR. WALKER: No, it's up to you.

10 MR. TURNER: I'm going to do the
11 same thing I did with Ms. Finn, I'm going to
12 ask Mr. Livingston to leave the room, we'll hit
13 the mute button and Bert and I will go over and
14 see if we have any.

15 MR. WALKER: That's fine.

16 (Brief respite.)

17 **E X A M I N A T I O N**

18 BY MR. TURNER:

19 Q. Mr. Livingston, I'm Patrick Turner, I
20 have just a few follow-up questions on the
21 questions you were asked by and responded to
22 Mr. Walker.

23 First, Mr. Walker asked you some
24 questions in which he discussed, or he phrased
25 in terms of a change in the Select program so

1 as to no longer require the purchase of a
2 nonregulated service as an eligibility
3 requirement. Just to make the record clear,
4 are you aware of any such change?

5 A. Change of nonregulated?

6 Q. A change in the requirements of Select
7 to where purchasing a nonregulated service was
8 no longer an eligibility requirement.

9 MR. WALKER: Patrick, it's Henry.

10 Just as you were able to help me
11 clarify, let me clarify that. It was not -- I
12 don't believe the record will reflect I asked
13 him about a change in what was required to be
14 eligible for the Select program. I think we
15 can agree that it has always been a requirement
16 that you have to purchase at least one
17 unregulated service.

18 The change that I was asking about
19 was a change which allowed customers for the
20 first time to redeem points for credit on the
21 regulated portion of their bill.

22 MR. TURNER: Okay. Thank you,
23 Henry, that clarifies what I thought. I was
24 misunderstanding what you asked. Thank you.

25 BY MR. TURNER:

1 Q. Early on you mentioned -- a phrase you
2 used was you sold Select to certain customers.

3 Just for the record, does a customer
4 have to buy the Select program?

5 A. No, they enroll. I used sold, but this
6 would refer to a transaction so that the
7 customer was offered, if the customer or
8 customers liked it, they were enrolled.

9 Q. Going back to Mr. Walker's statement
10 about redeeming against a regulated portion of
11 a bill, I want to ask you about the understand-
12 ing you had with regard to that redemption
13 against the regulated portion of a bill.

14 Did you understand that requirement to
15 be specific to a given month or did you
16 understand the requirement to be more aggregate
17 in nature?

18 A. My understanding it's always been
19 aggregate in nature, when you redeem, it's for
20 the total amount.

21 Q. You also testified that you are aware
22 of a change in the BellSouth Select program
23 that would allow a customer to receive a check
24 from BellSouth, redeeming points. Do you
25 remember that?

1 A. Yes, sir, I remember.

2 Q. Is it your testimony that that is the
3 only change that has been made to the
4 redemption of points under the Select program,
5 or is that just one of the changes you're aware
6 of?

7 A. I think there has been several changes.
8 Again, since I've moved over to this
9 new position, I'm not aware of all the changes,
10 but there has been at least more than one
11 change since that time.

12 Q. Unless I misunderstood the question,
13 you were asked about some scripts that
14 purportedly were developed specifically with
15 regard to the offering that has been
16 characterized by some as a three months of free
17 service. Do you remember that line of
18 questioning?

19 A. We were talking about who developed the
20 scripts.

21 Q. Have you ever seen a script that you
22 believe was designed specifically for this
23 three months of free service offering?

24 A. I have never seen a script. In my role
25 I don't look at scripts.

1 Q. What I think is my last series of
2 questions: I recall you being asked a question
3 about whether you had done anything to see
4 whether the offering that has been charac-
5 terized as three months of free service was
6 consistent with legal and regulatory require-
7 ments. And as I recall your answer was that
8 Mr. Tice will take that kind of offering and
9 run it through his channels and see if it
10 complied with legal and regulatory require-
11 ments.

12 A. Correct.

13 Q. I'll just state the impression there is
14 that there is nothing within BST that would or
15 should have been done to make sure that
16 offering that you developed was consistent with
17 legal or regulatory requirements. Is that
18 impression accurate?

19 A. Now let me clarify. I have been in
20 this position a while, and every offer that I
21 have developed -- Key Customer and there is
22 Full Circle and other ones that were mentioned
23 -- we always take it to Legal and Regulatory
24 for review and approval.

25 And I thought you were referring to

1 Select only which Mr. Tice would take. So when
2 I was answering that question it was in terms
3 of Select.

4 Given the combo, combination of
5 combining Select and Key, I should have taken
6 it to our BST's legal team and said, you know,
7 I'm thinking about doing this and getting their
8 input and approval. I didn't do that.

9 And the other thing I think I mentioned
10 was around there were two inaccuracies in the
11 whole program, one I didn't seek approval for
12 the joint combination offer. The other one was
13 on some training that got developed in my
14 group. Normally we review all that stuff. At
15 this time there were some inaccuracies in that
16 training. I didn't see that training until
17 after the offer was pulled down.

18 So there was a few things that should
19 have been done but weren't done. Normally it's
20 expected that it be done that way.

21 MR. TURNER: That's all I have,
22 Henry.

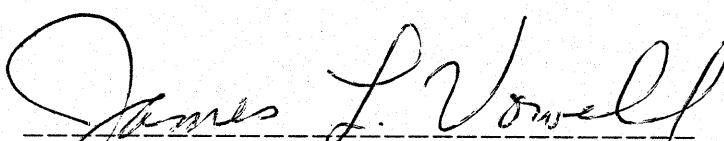
23 MR. WALKER: Well, let's all go to
24 lunch and we'll see you on Wednesday and
25 probably talk once or twice between now and

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again.

MR. TURNER: All right, thank you.
FURTHER DEPONENT SAITH NOT.

SWORN to before me when taken,
January 14th, 2002



James L. Vowell
Notary Public
State of Tennessee At Large
My Commission Expires: 11/30/02